

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 178, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, delete lines 4 through 17 and begin a new paragraph and
- 2 insert:
- 3 **"Chapter 21. Use of Credit Information**
- 4 **Sec. 1. As used in this chapter, "adverse action" means:**
- 5 **(1) a denial or cancellation of;**
- 6 **(2) an increase in a charge for; or**
- 7 **(3) a reduction or other adverse or unfavorable change in the**
- 8 **terms of coverage or amount of;**
- 9 **insurance in connection with the underwriting of a personal**
- 10 **insurance policy.**
- 11 **Sec. 2. As used in this chapter, "affiliate" means a company that**
- 12 **controls, is controlled by, or is under common control with another**
- 13 **company.**
- 14 **Sec. 3. As used in this chapter, "applicant" means an individual**
- 15 **who has applied with an insurer for coverage under a personal**
- 16 **insurance policy.**
- 17 **Sec. 4. As used in this chapter, "commissioner" refers to the**
- 18 **insurance commissioner appointed under IC 27-1-1-2.**
- 19 **Sec. 5. As used in this chapter, "consumer" means an:**
- 20 **(1) insured whose:**

- 1 (A) credit information is used; or
- 2 (B) insurance score is calculated;
- 3 in the underwriting or rating of a personal insurance policy;
- 4 or
- 5 (2) applicant for a personal insurance policy.

6 Sec. 6. As used in this chapter, "consumer reporting agency"
 7 means a person that, for a monetary fee or dues or on a
 8 cooperative nonprofit basis, regularly engages in the practice of
 9 assembling or evaluating consumer credit information or other
 10 information concerning consumers for the purpose of furnishing
 11 consumer reports to third parties.

12 Sec. 7. As used in this chapter, "credit information" means
 13 credit related information:

- 14 (1) derived from a credit report;
- 15 (2) found on a credit report; or
- 16 (3) provided on an application for a personal insurance policy.

17 The term does not include information that is not credit related,
 18 regardless of whether the information is contained in a credit
 19 report or in an application or is used to calculate an insurance
 20 score.

21 Sec. 8. As used in this chapter, "credit report" means a written,
 22 an oral, or another communication of information by a consumer
 23 reporting agency concerning a consumer's creditworthiness, credit
 24 standing, or credit capacity that is used or expected to be used or
 25 collected as a factor to determine personal insurance policy
 26 premiums, eligibility for coverage, or tier placement.

27 Sec. 9. As used in this chapter, "department" refers to the
 28 department of insurance created by IC 27-1-1-1.

29 Sec. 10. As used in this chapter, "insurance producer" has the
 30 meaning set forth in IC 27-1-15.6-2(7).

31 Sec. 11. As used in this chapter, "insurance score" means a
 32 number or rating that is derived from an algorithm, computer
 33 application, model, or other process that is based on credit
 34 information for the purpose of predicting the future insurance loss
 35 exposure of an individual consumer.

36 Sec. 12. As used in this chapter, "insured" means an individual
 37 entitled to coverage under a personal insurance policy.

38 Sec. 13. As used in this chapter, "insurer" refers to an insurer
 39 (as defined in IC 27-1-2-3) that issues a personal insurance policy.

40 Sec. 14. As used in this chapter, "personal insurance policy"
 41 means a policy that:

- 42 (1) provides one (1) or more of the kinds of insurance

described in Class 2 or Class 3 of IC 27-1-5-1; and

(2) is underwritten on an individual basis for personal, family, or household use.

Sec. 15. This chapter does not apply to commercial insurance.

Sec. 16. An insurer that uses credit information to underwrite or rate risks shall not do the following:

(1) Use an insurance score that is calculated using income, gender, address, ZIP code, ethnic group, religion, marital status, or nationality of the consumer as a factor.

(2) Deny, cancel, or decline to renew a personal insurance policy solely on the basis of credit information.

(3) Base an insured's renewal rate for a personal insurance policy solely on credit information.

(4) Take an adverse action against a consumer solely because the consumer does not have a credit card account.

(5) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating a personal insurance policy, unless the insurer does one (1) of the following:

(A) Presents to the commissioner information that the absence or inability relates to the risk for the insurer and treats the consumer in a way approved by the commissioner.

(B) Treats the consumer as if the consumer had neutral credit information, as defined by the insurer.

(6) Take an adverse action against a consumer based on credit information unless the insurer obtains and uses:

(A) a credit report issued; or

(B) an insurance score calculated;

not more than ninety (90) days before the date the personal insurance policy is first written or the renewal is issued.

(7) Use credit information unless the insurer recalculates the insurance score or obtains an updated credit report at least every thirty-six (36) months. However, the following apply:

(A) At annual renewal, upon the request of an insured or the insured's agent, the insurer shall re-underwrite and re-rate the personal insurance policy based on a current credit report or insurance score unless one (1) of the following applies:

(i) The insurer's treatment of the consumer is otherwise approved by the commissioner.

(ii) The insured is in the most favorably priced tier of the

insurer, within a group of affiliated insurers.

(iii) Credit information was not used for underwriting or rating the insured when the personal insurance policy was initially written.

(iv) The insurer reevaluates the insured at least every thirty-six (36) months after a personal insurance policy is issued based on underwriting or rating factors other than credit information.

This clause does not require an insurer to recalculate an insurance score or obtain an updated credit report of a consumer more frequently than one (1) time in a twelve (12) month period.

(B) An insurer may obtain current credit information upon the renewal of a personal insurance policy when renewal occurs more frequently than every thirty-six (36) months if consistent with the insurer's underwriting guidelines.

(8) Use the following as a negative factor in an insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a personal insurance policy:

(A) A credit inquiry coded by the consumer reporting agency:

- (i) not initiated by the consumer; or
- (ii) requested by the consumer for the consumer's own credit information.

(B) A credit inquiry coded by the consumer reporting agency relating to insurance coverage on the consumer's credit report.

(C) A collection account with a medical industry code that is coded by the consumer reporting agency on the consumer's credit report.

(D) Multiple lender inquiries:

- (i) coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry; and
- (ii) made within thirty (30) days of one another.

(E) Multiple lender inquiries:

- (i) coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry; and
- (ii) made within thirty (30) days of one another.

Sec. 17. (a) If:

(1) a determination is made through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete; and

(2) the insurer receives notice of the determination from the consumer reporting agency or the insured;

the insurer shall re-underwrite and re-rate the insured not more than thirty (30) days after receiving the notice.

(b) After an insurer re-underwrites or re-rates an insured as described in subsection (a), the insurer shall:

(1) make necessary adjustments, consistent with the insurer's underwriting and rating guidelines; and

(2) if the insurer determines that the insured has overpaid a premium, refund to the insured the amount of overpayment calculated back to the shorter of the:

(A) immediately preceding twelve (12) month period of coverage; or

(B) actual policy period.

Sec. 18. (a) If an insurer uses credit information in underwriting or rating a consumer, the insurer or the insurer's agent shall disclose, either on the insurance application or when the insurance application is taken, that the insurer may obtain credit information in connection with the application. The disclosure must be:

(1) written; or

(2) provided to the consumer in the same medium as the application for insurance.

The insurer is not required to provide a disclosure statement to an insured under this section with respect to a renewal policy if the insured has previously been provided a disclosure statement under this section with respect to the policy being renewed.

(b) Use of the following sample disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score."

Sec. 19. (a) If an insurer takes an adverse action based on credit information, the insurer shall:

(1) provide notice to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. 1681m(a); and

(2) provide notice to the consumer explaining the reason for

1 the adverse action.

2 (b) The reason provided under subsection (a)(2) must be
3 provided in sufficiently clear and specific language so that an
4 individual can identify the basis for the insurer's decision to take
5 an adverse action. The notice must include a description of all
6 factors, up to a maximum of four (4) factors, that were the primary
7 influences of the adverse action. The use of generalized terms such
8 as "poor credit history", "poor credit rating", or "poor insurance
9 score" does not meet requirements of this subsection. A
10 standardized credit explanation provided by a consumer reporting
11 agency or other third party vendor meets the requirements of this
12 section.

13 Sec. 20. (a) An insurer that uses an insurance score to
14 underwrite and rate risks shall file the insurer's scoring models or
15 other scoring processes with the department.

16 (b) A third party may file a scoring model or scoring process on
17 behalf of an insurer.

18 (c) A filing that includes insurance scoring may include loss
19 experience justifying the use of credit information.

20 (d) A filing related to credit information is a trade secret (as
21 defined in IC 24-2-3-2) and is confidential.

22 Sec. 21. (a) An insurer shall defend, indemnify, and hold an
23 insurance producer harmless from and against liability, fees, and
24 costs arising out of or related to the actions, errors, or omissions of
25 the insurance producer relating to a use of credit information, if
26 the insurance producer:

27 (1) obtains or uses credit information or insurance scores for
28 the insurer;

29 (2) follows the instructions of or procedures established by the
30 insurer; and

31 (3) complies with applicable laws and regulations.

32 (b) This section does not provide a consumer with a cause of
33 action that does not exist in the absence of this section.

34 Sec. 22. (a) A consumer reporting agency may not provide or
35 sell data or lists that include information submitted in conjunction
36 with:

37 (1) an insurance inquiry about a consumer's credit
38 information; or

39 (2) a request for a credit report or insurance score;
40 including the expiration dates of an insurance policy or other
41 information that may identify periods during which a consumer's
42 insurance expires and the terms and conditions of the consumer's

1 insurance coverage.

2 (b) The restrictions under subsection (a) do not apply to data or
3 lists a consumer reporting agency supplies to an:

4 (1) insurance producer from whom the information was
5 received;

6 (2) insurer on behalf of which the insurance producer
7 described in subdivision (1) acted; or

8 (3) affiliate or holding company of the insurer described in
9 subdivision (2).

10 (c) This section does not prohibit an insurer from obtaining a
11 claim history report or a motor vehicle report.

12 **Sec. 23. A violation of this chapter by an insurer is an unfair and**
13 **deceptive act and practice in the business of insurance under**
14 **IC 27-4-1-4."**

15 Delete pages 2 through 3.

16 Page 4, delete lines 1 through 16.

17 Page 4, line 38, strike "his" and insert "**the policyholder's**".

18 Page 5, line 6, strike "his" and insert "**the person's**".

19 Page 8, line 7, strike "its or his" and insert "**the lender's**".

20 Page 10, line 14, delete "discrimination in" and insert "**use of credit**
21 **information."**

22 Page 10, delete line 15.

23 Page 10, after line 15, begin a new paragraph and insert:

24 "SECTION 3. [EFFECTIVE JULY 1, 2003] **Notwithstanding**
25 **IC 27-2-21, as added by this act, IC 27-2-21, as added by this act,**
26 **applies to a personal insurance:**

27 (1) policy application that is submitted; or

28 (2) policy that is issued, delivered, amended, or renewed:

29 **after December 31, 2003."**

(Reference is to SB 178 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 5, Nays 2.

Senator Paul, Chairperson